

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**PROKERYON PRIMM v. RICKY BELL, Warden
and STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County
No. 3676 Monte Watkins, Judge**

No. M2005-02455-CCA-R3-HC - Filed March 31, 2006

The Petitioner, Prokeryon Primm, appeals from the order of the trial court dismissing his petition for habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed Pursuant
to Rule 20, Tenn. Ct. Crim. App. R.**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Prokeryon Primm, Nashville, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; C. Daniel Lins, Assistant Attorney General; Victor S. Johnson, District Attorney General, and Roger Moore, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On May 9, 2000, the Petitioner, Prokeryon Primm, pleaded guilty to and was convicted of one count of especially aggravated robbery. It appears from the judgment of conviction attached to the petition that the Petitioner was sentenced as an especially mitigated offender to 13.5 years in the Department of Correction. On August 3, 2005, the Petitioner filed a petition for writ of habeas corpus alleging that his 13.5 year sentence was void because a sentence of fifteen years is the minimum sentence for his Class A felony conviction. See Tenn. Code Ann. § 40-35-111(b)(1). On August 9, 2005, the trial court denied relief, finding that the Petitioner failed to establish that the

judgment was either void or illegal. It is from the order of the trial court denying habeas corpus relief that the Petitioner appeals.

The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993). Habeas corpus relief is available only when it appears on the face of the judgment or the record that the trial court was without jurisdiction to convict or sentence the defendant or that his sentence has expired. Id. at 164.

The Petitioner argued in his petition and on appeal that his 13.5 year sentence is illegal and void. His claim is that the minimum sentence for his Class A felony conviction is fifteen years and thus the sentencing court was without jurisdiction to sentence him to 13.5 years. See Tenn. Code Ann. § 40-35-111(b)(1).

It is apparent from the judgment attached to the petition that the sentencing court sentenced the Petitioner to 13.5 years because it determined that he was an especially mitigated offender. See Tenn. Code Ann. § 40-35-109. As such, the sentencing court properly reduced the length of the Defendant's sentence by ten percent, or 1.5 years, resulting in the sentence of 13.5 years. See id. Because this sentence is authorized by law, the sentence is not illegal or void.

The Petitioner's judgment of conviction is valid upon his face. The sentence of confinement has not expired. Because the petition, along with the attachments, failed to state a cognizable claim for habeas corpus relief, we conclude that the trial court properly dismissed the petition without a hearing and without appointing counsel. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

DAVID H. WELLES, JUDGE